Cotton Claims.

The New Act of Congress, its Benefits and its Limitations.

BY

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Newspaper articles and private letters from all over the South show that a large amount of misapprehension exists in the Southern States in regard to the scope and effect of the recent provision made by Congress for claims for cotton seized at the close of the Civil War. The object of this statement is to furnish exact information on the subject.

THE STATUTE.

This provision forms a part of the general Judicial Code, an enactment of 301 sections. Sec. 162 is as follows:

"SEC. 162. That the Court of Claims shall have jurisdiction to hear and determine the claims of those whose property was taken subsequent to June the first, 1865, under the provisions of the Act of Congress approved March twelfth, 1863, entitled 'An Act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States,' and Acts amendatory thereof, where the property so taken was sold and the net proceeds thereof were placed in the Treasury of the United States;

"and the Secretary of the Treasury shall return said net proceeds to the owners thereof on the judgment of said Court,

"and full jurisdiction is given to said Court to adjudge said claims, any statutes of limitation to the contrary notwithstanding."

TIME OF TAKING EFFECT.

The last section of the Judicial Code is as follows:

"SEC. 301. This act shall take effect and be in force on and after January first, nineteen hundred and twelve."

A few test petitions were filed in the Court of Claims in March, 1911, in the expectation that the Department of Justice, which is charged with the defense of cases in the Court of Claims, would raise no objection to the preliminary steps being taken before the first of January, 1912, including the furnishing of evidence from the archives of the United States Treasury Department and the taking of testimony in the Southern States of living witnesses. Time is of vital importance, since those who survive after a period of forty-six years must necessarily be of advanced years.

This expectation has been disappointed by an absolute refusal on the part of the officers of the Department of Justice to allow any steps to be taken under Sec. 162 above quoted until January 1st, 1912.

An effort is now being made to secure action indirectly by filing petitions in the court under the Tucker Act, but here again the Department of Justice is making a vigorous resistance and has filed printed arguments of a hundred and thirty pages in opposition to such procedure. We have also discussed the subject in an extended brief. The question was argued on May 1, 1911, and now awaits the decision of the court.

WHAT CLAIMS ARE INCLUDED.

The right granted under the new law is strictly limited to cotton seized after June 1st, 1865. There are many unpaid claims for cotton taken in 1863 and 1864, but the present law does not embrace any such claims. These stand precisely as they did before this act was passed. It is possible that these may be considered by the Court of Claims under the Tucker Act, where net proceeds are to be found in the Treasury. This question has not yet been finally decided.

RECOVERY LIMITED TO NET PROCEEDS.

At the close of the Civil War the price of cotton was as high as at any time in history. Many claimants from whom cotton was taken have expected to recover under this statute the value of the cotton taken. The law does not provide for this.

It provides for payment of only the net proceeds in the Treasury. No interest is paid under any conditions.

It is well known that the agents who were engaged to collect this cotton from the plantations were generally paid twenty-five per cent in kind of whatever they collected. The claimants under the present law can not recover for this portion of their cotton. The cotton was shipped to the sea coast and then usually sent to New York where it was sold. Expenses piled up at every turn and all these were charged against the cotton, with the result that when the money reached the Treasury, it represented much less than the value of the cotton taken. Yet this is all that can be recovered.

As an instance of the diminution of the value of cotton on the way to the Treasury by reason of payments to agents for collection, accident, and expenses of transportation and sale, it appears in the official report of the Treasury Department that in four adjoining counties of one State, 30,610 bales of cotton were seized, but the total amount realized from this was an average of only $61.65 for each bale seized. In three other counties 1,810 bales were collected and the total net proceeds to be divided proportionately among these results in an average of only $26.59 a bale. This is unusually low, but it is uncommon to find net proceeds substantially in excess of $100 a bale.

NO RECOVERY, IF NO PROCEEDS.

In a very great number of cases, no money whatever reached the Treasury. Sometimes the cotton was burned, sometimes it disappeared in transit, and its ultimate destination is the subject only of speculation. In other cases, the cotton was sold and the money reached the Treasury, but all record identifying the cotton with the owner has been lost.

An instance which has come to our knowledge is that claims from one county in Alabama amounting to about 700 bales were filed in the Treasury Department in 1872. The Secretary of the Treasury made a report in 1875 of cotton seized after June 1, 1865, but not a single bale of cotton is reported to have been collected in that county. These claims

must therefore fail, although undoubtedly the cotton was taken by Federal authorities, unless some record not now available is discovered.

Many receipts have been preserved and are now exhibited showing beyond doubt the taking of cotton, for which no corresponding proceeds appear in this official report. It is probable that some proceeds will be found upon more detailed investigation which were omitted from this report, but these must be exceptions.

There are some instances where a considerable amount of cotton is shown to have been taken from one locality, but the names of the owners are wanting. Here it may be possible to prove the total quantity taken from that locality and secure a *pro rata* distribution of the proceeds. But many difficulties lie in the way of such a proceeding.

Congress passed an act in 1872 allowing claimants for cotton taken after June 30, 1865, to present their claims to the Treasury Department. Claims were presented to the amount of 136,148 bales. The total number of bales taken after June 1, 1865, shown in the report already alluded to, of which the net proceeds reached the Treasury, was slightly in excess of one half this number. Thus, it would seem that about one half of the cotton seized was never represented by any net proceeds whatever in the Treasury.

THE DEFENSE OF CLAIMS.

This law does not provide for payment of the claims from the Treasury. It merely opens a tribunal where claims can be adjudicated on their merits. Every claim presented to the Court of Claims is a separate lawsuit. The government is represented before that court by an Assistant Attorney-General, an officer of the Department of Justice, and a force of sixteen attorneys, many of whom have long experience in government litigation and who devote their entire attention to defending the government against claims there presented. They may be expected to raise and present every defense which their intimate knowledge of the subject-matter can suggest, whether technical or upon the merits of the claim.

Experienee so far in connection with these cases indicates that the defense will be conducted with great aetivity. Some defenses which will be made can now be anticipated, but it is almost the universal experience in the prosecution of government claims before the Court of Claims that many more defenses are ultimately interposed to claims than can possibly be anticipated when the claims are filed, even by the persons most familiar with the subjeet.

The great time whieh has elapsed since these claims originated will make it very difficult to meet defenses based upon record evidence found in the archives either of the United States or of the Confederate government.

CONFEDERATE TITLE.

One defense which will certainly be vigorously urged is that the cotton taken was the property of the Confederate government. This is already officially announced. When the Secretary of the Treasury was authorized, under an act of Congress passed in 1872, to allow claims for cotton taken after June 30, 1865, he allowed $195,896.21 out of a total claimed, which is estimated on a basis of $100 a bale, at $13,614,800.00. This was about one and a half per cent of the amount claimed. The balance was rejected, chiefly, it is stated in an official circular of the Treasury Department, for the reason that the Confederate records show that the claimants had sold the cotton to the Confederate government and it was not therefore individual cotton when seized after June 30, 1865, but was the property of the Confederate government. This statement is said to be supported by official records from the Confederate Treasury Department, showing that many planters sold cotton to the Confederate government and received Confederate bonds in exchange. The Supreme Court of the United States has said of this: "The sale was complete when the bonds were accepted in payment. The title then passed to the Confederate States without a formal delivery."

It has been held that title to all property of the Confederate government passed to the United States at the surrender.

If the cotton for which claim is made was the same cotton thus subscribed to the Confederate cotton loan, and if the bonds were delivered, it will be seen that the claim is likely to fail, on the ground that the cotton belonged to the United States when seized, unless some reason can be shown why the decision above quoted should not apply. Here is therefore a question of fact to be decided in many cases, dependent upon oral testimony. At this late date, it is to be seen that the claimants are at a very great disadvantage in being obliged to rebut presumptions arising from such records by the scant surviving oral evidence or otherwise.

A satisfactory explanation can undoubtedly be made in many instances that the cotton on hand in 1865 was not the same as the subscription cotton, or that private cotton was taken instead. It may also be shown that bonds were not issued or not delivered, although the cotton was subscribed and, if this omission occurred, title never passed to the Confederacy.

The record evidence of cotton subscription is therefore not conclusive, but presents a serious difficulty which must be met and overcome by the care of the claimant in securing all available witnesses and the skill of his attorney in bringing out the facts and in arguing the points of law.

LOYALTY.

It is understood that the claimants for this cotton were, in general, adherents to the Southern cause. The act, Sec. 162, above quoted, revives the earlier act of Congress approved March 12, 1863, and gives a remedy under the provisions of that act. One of the provisions of that act is that payments shall be made to any person applying to the Court of Claims upon proving his ownership of the cotton "and that he has never given any aid or comfort to the present rebellion." It is also provided in Sec. 159 of the Judicial Code immediately preceding the section quoted in regard to cotton claims "that the claimant, and, where the claim has been assigned, the original and every prior owner thereof, if a citizen, has at all times borne true allegiance to the Government of the United States, and, whether

a citizen or not, has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government."

It is expressly provided that these statements may be traversed by the Government and that the petition shall be dismissed if the decision is against the claimant on this issue.

It was decided by the Supreme Court of the United States in the year 1870, under the original act of 1863, that a person who had aided the cause of the South could plead under that act that he had been pardoned by one of the proclamations of the President issued in 1865, 1867 and 1868. The last was a proclamation of general amnesty. The Supreme Court said of the pardon, "It blots out the offenses and removes all its penal consequences." It was therefore decided that the plea of pardon was equivalent to continuous support of the Union's cause throughout the War and that no proof of actual loyalty to the United States was necessary in those cotton cases.

We believe that this doctrine applies to the act of 1911 as well as it did to the act of 1863 and are confident that it will be so decided by the courts under the act of 1911. Nevertheless it seems highly improbable that so important a point as this will be left unchallenged by the astute counsel for the United States who defend the Government in such cases. It therefore seems likely that the entire question must be reargued and it may be that, before any of these claims can be paid, a test case must be appealed to and decided by the Supreme Court of the United States on this point.

TIME OF PAYMENT.

It may be readily seen after this full statement that claimants can not hope to secure their money immediately. Much delay will necessarily ensue until the defenses by the United States are all considered and decided by the court. Any statements that these claims will be collected within a year from this date are based either upon ignorance or design. The experience of a lifetime in the prosecution of government claims makes two things very certain: that payment will be greatly delayed and

that the delays will be far more than can be anticipated at the present time.

JUDGMENTS BINDING.

When all these defenses are met, argued and decided by the courts, judgments will be rendered by the Court of Claims in favor of those whose cotton was taken after June 1st, 1865, for the amount of the net proceeds in the Treasury, without regard to the loyalty of the owner, as we believe, but upon proof that the title was still in the original owner and not in the Confederate government. When a judgment is so rendered, if no appeal is taken, it is regarded as an absolute binding obligation of the United States and payment is made by the Government without question.

APPROPRIATIONS.

Sec. 162, if read alone, would seem to make an appropriation from the Treasury to pay such judgments, but another law declares that no act of Congress shall be construed to make an appropriation "unless such act shall, in specific terms, declare an appropriation to be made." Consequently, even after judgment, some delay must occur because no money is available for payment of such judgment without an appropriation for this purpose by Congress. The delay is only until the close of the next regular session.

PAYMENT OF JUDGMENTS CERTAIN.

This law is different from the law under which claims for stores and supplies taken during the Civil War have been considered by the Court of Claims. In these claims, findings of fact are made by the Court of Claims for which Congress may or may not appropriate in its discretion, and much delay has occurred in making such appropriations. Judgments, such as will be rendered in the cotton claims where they pass successfully the scrutiny of the court, are paid by regular annual appropriations, made at each session of Congress. Claimants who pass through all the difficulties in the Court of Claims may therefore be sure of getting their money.

May 15, 1911.